

money that they receive. Under current law, the Secretary of Treasury ("Secretary") has the authority to postpone, indefinitely, repayment.

#### **SEC. 3. SUNSET ON THE LENDING FUND.**

Under existing law, the Lending Fund is authorized to exist forever. This section requires that the Lending Fund sunset within 15 years of the date that the Lending Fund was enacted.

#### **SEC. 4. TRIGGER TO PROTECT AND PRESERVE TAXPAYER DOLLARS.**

This section prohibits the Secretary from making any new purchases (i.e. prohibits the Secretary from providing additional money, through the Lending Fund) if the Federal Deposit Insurance Corporation is appointed receiver of 5 percent or more of the number of eligible financial institutions that have obtained a capital investment under the Lending Fund program.

#### **SEC. 5. DISALLOWING FUTURE LENDING FUND PURCHASES OF FINANCIAL INSTITUTIONS THAT PARTICIPATED IN THE TROUBLED ASSET RELIEF PROGRAM ("TARP").**

This section prohibits—as of the date of this Act being enacted—the Secretary from making additional purchases, through the Lending Fund, of a financial institution (i.e. providing money to a bank) that participated in the TARP program. This section would end the double-dipping practice of financial institutions that have previously received taxpayer funds, at low (subsidized) interest rates, through TARP, doing so again, through the Lending Fund.

#### **SEC. 6. ALLOWING ONLY "HEALTHY" FINANCIAL INSTITUTIONS TO PARTICIPATE IN THE LENDING FUND.**

Under current law, when determining whether a bank is financially sound, for the purpose of receiving Lending Fund dollars, the Secretary can take into consideration what the bank's strength would be after receiving the funds. This section changes the law to require that the Secretary determine whether a bank is financially stable, without being able to include future Lending Fund distributions into the equation. Therefore, a bank must be stable on its own, (without regard to future Lending Fund dollars), in order to be approved to participate in the program.

#### **SEC. 7. ENSURING THAT REGULATORS HAVE MORE MEANINGFUL CONTROLS OVER THE LENDING FUND.**

This section requires that the Secretary must obtain prudential regulators' approval—rather than consultation—before an individual applicant financial institution can receive distributions through the Lending Fund program.

#### **SEC. 8. BENCHMARK ADJUSTMENT.**

This section changes the benchmark by which a financial institution's small business lending has increased from the current level (the 4 full quarters immediately preceding the date of the Jobs Act being enacted) to a new benchmark of calendar year 2007. This section addresses concerns that the Lending Fund may reward banks that would have increased their lending even in the absence of government support, as the Fund's incentive structure is calculated in reference to lending levels, which were low by historical standards.

#### **NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM IMPROVEMENT ACT**

Mr. COBURN. Mr. President, the intent of the National Instant Criminal Background Check System, NICS, Improvement Act of 2007 is to increase

compliance with existing law in order to prevent guns from getting into the hands of those with mental health concerns who might cause harm to others.

Unfortunately, the initial draft of this legislation would have expanded the existing classes of people forbidden by statute from possessing or purchasing a weapon to include people who simply had trouble managing their finances or other personal affairs. This expansion of existing law would have legitimized overly broad regulations that included people who have never been found to be a danger to themselves or to others.

This is problematic because these overly broad regulations have allowed for the criminalization of veterans who needed help managing the benefits they received for serving our country. These veterans lost their constitutional right to bear arms without committing a crime, without going before a court of law, and without being found to be a possible danger to themselves or anyone else. Furthermore, they lost their rights without their knowledge, and without a way to restore them.

For this reason I did not consent to H.R. 2640 until these concerns were adequately addressed.

Nobody wants firearms in the hands of individuals who are a danger to themselves or to others, but this desire for safety must be adequately balanced with a respect for our Constitution and the right to bear arms. While I favor keeping guns out of the hands of criminals and those who are a danger to themselves or to others, I was concerned that this bill would unnecessarily and unfairly hurt our veterans and other law-abiding Americans.

The initial version of this bill codified overly broad regulations for what it means to be "adjudicated as a mental defective" to include individuals who are in no danger to themselves or to others, but cannot manage their own finances or other personal affairs. These regulations were determined independent of congressional intent and are overly inclusive.

As a result of this definition, Americans who have never committed a crime and are of no danger to themselves or to others have been unfairly included in NICS. Once added to this list, it has been nearly impossible for an individual to remove their name from this list, meaning they are prohibited from owning a firearm for the rest of their life.

Among those unfairly added are up to 140,000 veterans who receive benefits for their service to our country, because they cannot manage their own affairs. This bill would have made this overly inclusive definition law.

Fortunately, Senator SCHUMER and I were able to work together to erase all mention of this definition in the bill. The term "adjudicated as a mental defective" is not defined in law. By not codifying these overly inclusive regulations, Congress and the Bureau of Alcohol, Tobacco, and Firearms Enforce-

ment have another chance to develop regulations for what "adjudicated as a mental defective" means to more accurately protect the second amendment rights of law-abiding citizens.

Additionally, we made several other changes to improve this bill. The bill now ensures: Veterans are notified when they are added to this list to ensure they do not knowingly violate Federal law and also lets them know when they enter into a determination process that could lead to them being added to this list; those who believe they have been unfairly added to NICS have their applications for removal from this list processed; those who previously were adjudicated as a mental defective but no longer pose a threat to society are cleared from this list; a State program exists that allows those wrongfully included on this list to appeal their inclusion; and that compensation is available for those who prove they were wrongfully included on NICS in court.

These changes strike a much healthier balance between ensuring the second amendment rights of our veterans and other law-abiding citizens and removing guns from those who are a threat to our society.

It is also important for Americans to realize that this bill, if enacted earlier, would not have prevented the tragic Virginia Tech shootings. This bill does not change Federal law regarding who should be added to NICS. States still have to decide to what extent they will report those adjudicated as a mental defective to the national list.

Under existing law, the Virginia Tech gunman already was considered a mentally dangerous person and should not have been allowed to purchase a weapon. At the time of the shootings, he was prohibited from purchasing any guns because two different judges found him to be a danger to himself or others. Additionally, the gunman should have been barred from buying a gun because he had been involuntarily committed for mental treatment.

He should have been reported to NICS because of a law passed last decade that required States to report people like him to the Federal system so that they would be prohibited from purchasing weapons. Unfortunately, because of a communications breakdown among Virginia authorities, this did not occur.

Since the Virginia Tech tragedy, several States have begun submitting these records to NICS and added hundreds of thousands of persons to the database without any additional Federal law being passed. According to the Washington Post, nearly 220,000 names have been added to this FBI list of people prohibited from buying guns because of mental health problems—a more than double increase in only 7 months.

While the intent of this legislation is good, Congress owes it to all Americans to pass legislation that is necessary and does not have unintended

consequences that compromise the rights of law abiding citizens.

I am thankful for the opportunity for my concerns to be addressed and believe this bill is much improved.

#### ADDITIONAL STATEMENTS

##### REMEMBERING DR. ALFRED KAHN

• Mr. KOHL. Mr. President, as chairman of the Senate's Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights, I pay tribute to a giant of antitrust law and economics, the economist and legal scholar Alfred E. Kahn, who passed away on December 27, 2010, at the age of 93.

A scholar at the forefront of public utility deregulation, Dr. Kahn was perhaps best known as the "father of airline deregulation." His work in the Carter administration in the 1970s to deregulate the airline industry led the way for dramatic reductions in airline fares, saving consumers billions, when he spearheaded passage of the U.S. Airline Deregulation Act of 1978 as chair of the now-defunct Civil Aeronautics Board. While a highlight of his career, this was just one of many of Dr. Kahn's achievements—throughout his life he was an outstanding advocate for consumers, against monopoly and unnecessary government interference in the private market, and for the creative and vigorous enforcement of antitrust law.

Born on October 17, 1917, in Paterson, NJ, the son of Russian immigrants, Alfred Edward Kahn graduated from New York University, first in his class, at the age of 18 and received a Ph.D. from Yale University. In the early 1940s, Dr. Kahn worked at the Brookings Institution, in the Antitrust Division of the Department of Justice, and for the War Production Board as an economist.

During World War II, Dr. Kahn served as an Army economist for the Commission on Palestine Surveys. Soon after the war, he spent 2 years as a professor at Ripon College in Wisconsin, before beginning his esteemed career at Cornell University, which, other than the time he spent in public service, would last until his death.

Before stepping onto the national political scene, Dr. Kahn served as head of the New York State Public Service Commission, the State's regulator for electricity, gas, water, and telephones. From there, seeking to use deregulation as a means to stimulate economic growth, President Carter tapped Dr. Kahn to serve as chairman of the now-defunct Civil Aeronautics Board in 1977. The CAB was entrusted with economic regulation of the airlines—including the routes carriers could fly and the fares they could charge.

At the time of his appointment, Dr. Kahn professed to know little about the airline business, referring to airplanes as "marginal costs with wings." However, he was a quick study, and the

industry was ripe for change. Substantial investments had recently been made in wide-body aircraft, and industry players wanted access to new routes and new passengers. Though slight in physical stature and viewed purely as an academic and not someone who could wield much influence, Dr. Kahn was able to take on the industry and persuade the establishment that excessive government regulation had long-harbored inefficiency and was facilitating artificially inflated fares.

Through various avenues, including the press, CAB proceedings, and testimony in Congress, Dr. Kahn was the intellectual leader and primary advocate of deregulating the airline industry, highlighting that many planes were flying half full at fares many could not afford. Less than 2 years after assuming his post at the CAB, Congress passed and President Carter signed into law the Airline Deregulation Act. This landmark legislation was the first complete dismantling of a Federal regulatory scheme since the 1930s. In all, Dr. Kahn testified before U.S. House and Senate committees more than 70 times in his career. He testified before our Antitrust Subcommittee several times, always eloquently and honestly, with impressive candor and penetrating insight.

In later years, Dr. Kahn steadfastly defended his work on airline deregulation by pointing out that more Americans were flying with greater choice at lower rates than ever before. In a 1998 essay in the *New York Times*, Dr. Kahn admitted that even though the "resulting competitive regime has been far from perfect, it has saved travelers more than \$10 billion a year." For Dr. Kahn, the deregulation of the airline industry had one powerful effect: empowering the consumer through competition. This was perhaps the signal achievement of his outstanding career. Throughout his life, he stood for consumers against entrenched monopolies, for innovation against the established economic order, and for unleashing the dynamism and creativity of an unfettered free market and excessive and heavyhanded regulation.

Not only a brilliant economist and legal scholar, Dr. Kahn will be remembered for his sharp wit and humor. Dr. Kahn famously created a buzz with his initiative to eliminate government "bureaucratese" when the Washington Post published a copy of his memo calling for his staff to use "plain English" and "quasi-conversational, humane prose" in their writing. Following his time in Washington, Dr. Kahn returned to chair the economics department at Cornell, where he would author more than 130 academic papers and 8 books.

Upon his passing, I want to express my gratitude to Dr. Alfred Kahn for his contributions to the antitrust and regulatory economics fields and for his service to the American people and offer my deepest condolences to his wife and family.●

#### 100TH ANNIVERSARY OF PLUM LAKE, WISCONSIN

• Mr. KOHL. Mr. President, Senator JOHNSON and I congratulate the residents of the town of Plum Lake in Vilas County, WI, as they celebrate the 100th anniversary of their town's founding. Plum Lake comprises the communities of Sayner and Star Lake, both of which have long traditions as vacation destinations because of the friendly people and the magnificence of the lakes and forests, as well as the abundance of fish and game. Folks looking to escape the day to day grind can retire to this beautiful area year round to hunt, fish, water and snow ski, and hike along nature trails. Visitors are often surprised to discover that the town's slogan, "Birthplace of the snowmobile," reflects its invention there by Carl Eliason in 1924.

The town of Plum Lake was officially formed by an ordinance passed by the Vilas County Board on January 5, 1911. The ordinance went into effect April 1, 1911, creating the new town from territory detached from the town of Arbor Vitae. The first town meeting was held in Sayner on April 14, 1911.

In the 19th century, Plum Lake was the center of a vibrant lumber industry, which eventually gave way to tourism. Two years before the founding of the town, in the summer of 1909, Herb Warner and others began construction on one of Wisconsin's oldest golf courses, the Plum Lake Golf Club, which opened in 1912. Plum Lake also boasts one of Wisconsin's oldest summer camps, Camp Highlands, which began when Harry O. Gilette, a University of Chicago Laboratory School headmaster, brought 10 boys to a remote point on Plum Lake for a summer in the wilderness in 1904.

Today, Plum Lake maintains both its majestic views and its place as a prime vacation destination. We are very proud to represent this community and we congratulate the town of Plum Lake on this historic milestone. We join with all Wisconsinites in expressing our pride in the treasures of our State.●

#### MESSAGE FROM THE HOUSE

At 4:24 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 1079. An act to amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend the airport improvement program, and for other purposes.

#### REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JOHNSON of South Dakota, from the Committee on Banking, Housing, and Urban Affairs: